

WEST CEDARRAUM
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CIV 56177

BRIAN MICHELS,

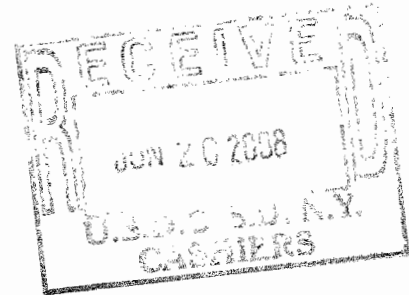
Plaintiff

-against-

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, POLICE OFFICER
JOHN HIDALGO of the NEW YORK CITY
POLICE DEPARTMENT,

Defendant(s),

COMPLAINT AND
JURY DEMAND



PRELIMINARY STATEMENT

1. This is an action for monetary damages (compensatory and punitive) against THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, and POLICE OFFICER JOHN HIDALGO of the NEW YORK CITY POLICE DEPARTMENT, arising out of the false arrest, false imprisonment, malicious prosecution and assault and battery of BRIAN MICHELS.

2. On September 4, 2007, POLICE OFFICER JOHN HIDALGO of the NEW YORK CITY POLICE DEPARTMENT and other members of the NEW YORK CITY POLICE DEPARTMENT, acting under the color of state law, intentionally and willfully subjected plaintiff to, inter alia, false arrest, false imprisonment and detention, malicious prosecution and assault and battery for acts of which plaintiff was innocent. This unconstitutional and unreasonable seizure of the plaintiff and her property was in violation of plaintiff's rights under the Fourth and Fourteenth Amendments of the United States Constitution.

3. The Plaintiff, BRIAN MICHELS, through his attorney, JONATHAN A. FINK, complaining of the defendants, respectfully alleges:

JURISDICTION

4. This action is brought under 28 USC §§ 1331 and 1343, 42 §§ 1983, 1985 and 1988 and the Fourth, Fifth and Fifteenth Amendments to the Constitution of the United States. Pendant Jurisdiction, pendant party jurisdiction, and supplementary jurisdiction over plaintiff's state law claims is asserted.

5. The amount in controversy exceeds \$75,000.00 excluding interest and costs.

6. Venue is laid within the United States District Court for the Southern District of New York in that the defendant NEW YORK CITY POLICE DEPARTMENT, particularly New York County, has its headquarters located within the boundaries of the Southern District of New York.

PARTIES

7. Plaintiff at all times relevant hereto resided in the City, County and State of Kings.

8. That at all times hereinafter mentioned, and upon information and belief, the defendant, THE CITY OF NEW YORK, was at all times relevant hereto, a municipal corporation duly organized and existing under the laws, statutes and charters of the State of New York.

9. THE NEW YORK CITY POLICE DEPARTMENT was at all times relevant hereto, an agency of the defendant THE CITY OF NEW YORK.

10. That at all times hereinafter mentioned, and on information and belief, the defendant POLICE OFFICER JOHN HIDALGO, was at all times relevant hereto, an employee of the defendant CITY OF NEW YORK, as a police officer employed by the defendant, THE NEW YORK CITY POLICE DEPARTMENT.

11. At all times mentioned herein, defendants were acting under color of state and local law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the City of New York and the State of New York.

12. That at all times hereinafter mentioned, and upon information and belief, the individual defendants are named herein both personally and in their official representative capacities as police officers employed by the defendants, THE CITY OF

NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT. And that each and all of the acts of the individual defendants alleged herein were done by the individual defendants and each of them under cover and pretense of the statutes and laws of the State of New York, and under and by virtue of their authority as police officers and employees of defendant, THE CITY OF NEW YORK.

13. That as a result of the foregoing, the defendant, THE CITY OF NEW YORK, is liable for the individual defendant's acts under to the doctrine of "respondeat superior."

NOTICE OF CLAIM

14. Within 90 days of the occurrence of the incident, plaintiffs filed written Notice of Claim with the City of New York. This matter has not been settled or otherwise disposed of.

FACTUAL ALLEGATIONS

15. On September 4, 2007, at approximately 5:00 p.m., members of the New York City Police Department, including defendant POLICE OFFICER JOHN HIDALGO, at or around East 17th Street, New York, New York, on the sidewalk in front of Barnes and Noble forcefully arrested plaintiff and removed him to the 13th Precinct where plaintiff remained until he was released from New York County Criminal Court at 100 Centre Street. Moreover, Plaintiff was required to return to court a number of times until this case was dismissed on or about January 3, 2008. In the process of arresting Plaintiff members of the New York City Police Department injured Plaintiff's right shoulder, wrist and elbow. The injuries that Plaintiff received were bruising and a sprain to his right arm. As a result, Plaintiff went Long Island College Hospital where received treatment for his injuries soon after he was released from custody.

16. As a result, defendants imprisoned and detained plaintiff, restrained him, and deprived him of his liberty and property without any right to do so, and against the will of the plaintiff.

17. The arrest of the plaintiff was committed by the defendants without legal process and without probable cause.

18. The plaintiff remained in custody for approximately 24 hours. Moreover, he was required to continually appear in court as a result of his arrest in this case.

Plaintiff also had to retain legal counsel on this criminal case. The cost of retaining counsel was \$2,000.00.

19. Defendants acted maliciously and intentionally.

20. As a direct and proximate result of the acts of defendants, plaintiff suffered injuries including but not limited to, embarrassment, humiliation, loss of liberty, psychological and physical injury, pain, suffering, emotional distress and mental anguish.

FIRST CLAIM FOR RELIEF
(FALSE ARREST AND ILLEGAL IMPRISONMENT)

21. Paragraphs 1 through 20 are herein incorporated by reference.

22. Defendants subjected plaintiff to false arrest, imprisonment, and deprivation of liberty without probable cause.

23. Defendants have deprived plaintiff of her civil, constitutional and statutory rights and have conspired to deprive her of such rights and are liable to plaintiff under 42 U.S.C. §§ 1983 and 1985 and the New York State Constitution.

24. As a result of the false arrest, imprisonment, and deprivation of liberty, plaintiff was damaged in the sum of One Million (\$1,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

A. In favor of the plaintiff in the amount of One Million (\$1,000,000.00) Dollars;

B. Awarding plaintiff punitive damages in the amount of One Million (\$1,000,000.00) Dollars;

C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

SECOND CLAIM FOR RELIEF
(MUNICIPAL LIABILITY)

25. Paragraphs 1 through 24 are incorporated herein by reference.

26. Defendant CITY OF NEW YORK is liable for the damages suffered by the plaintiff as a result of the conduct of its employees, agents, and servants.

27. Defendant CITY OF NEW YORK knew or should have known of their employees', agents', or servants' propensity to engage in the illegal and wrongful acts detailed above.

28. Upon information and belief, defendants and their supervisors have in the past falsely arrested individuals without probable cause, and made, and allowed other fellow police officers to make false entries in official police department records to cover up and hide their wrongful conduct.

29. Defendant CITY OF NEW YORK has failed to take steps necessary to discipline, train, supervise or otherwise correct the improper, illegal conduct of the individual defendants in this and in similar cases involving misconduct.

30. Defendant CITY OF NEW YORK has damaged the plaintiff by its failure to properly supervise, train, discipline, review, remove, or correct the illegal and improper acts of its employees, agents or servants in this and in similar cases involving police misconduct.

31. Defendants subjected plaintiff to false arrest and false imprisonment.

32. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the defendant CITY OF NEW YORK in the amount of One Million (\$1,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

A. In favor of the plaintiff in the amount of One Million (\$1,000,000.00) Dollars;

B. Awarding plaintiff punitive damages in the amount of One Million (\$1,000,000.00) Dollars;

C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

THIRD CLAIM FOR RELIEF
(FOURTH AMENDMENT)

33. Paragraphs 1 through 32 are incorporated herein by reference.

34. Defendant POLICE OFFICER JOHN HIDALGO illegally arrested plaintiff subjecting him to false arrest, imprisonment and deprivation of liberty without probable cause.

35. That as a result of the foregoing, the plaintiff has been deprived of his following rights, privileges and immunities secured her by the constitution and the laws of the United States: the right to be secure in her person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments; the rights of the plaintiff not to be deprived of life, liberty or property without due process of law under the Fourth and Fourteenth Amendments; and the right to be free from a deprivation of his civil rights in violation of the statutes made and provided.

36. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the defendant CITY OF NEW YORK in the amount of One Million (\$1,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

A. In favor of the plaintiff in the amount of One Million (\$1,000,000.00) Dollars;

B. Awarding plaintiff punitive damages in the amount of One Million (\$1,000,000.00) Dollars;

C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

FOURTH CLAIM FOR RELIEF
(FOURTEENTH AMENDMENT)

37. Paragraphs 1 through 36 are incorporated herein by reference.

38. Defendant POLICE OFFICER BRIAN HIDALGO illegally arrested plaintiff subjecting her to false arrest, imprisonment and deprivation of liberty without probable cause.

39. That as a result of the foregoing, the plaintiff has been deprived of his following rights, privileges and immunities secured her by the constitution and the laws of the United States: the right to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments; the rights of the plaintiff not to be deprived of life, liberty or property without due process of law under the Fourth and Fourteenth Amendments; and the right to be free from a deprivation of his civil rights in violation of the statutes made and provided.

40. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the defendant CITY OF NEW YORK in the amount of One Million (\$1,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

- A. In favor of the plaintiff in the amount of One Million (\$1,000,000.00) Dollars;
- B. Awarding plaintiff punitive damages in the amount of One Million (\$1,000,000.00) Dollars;
- C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and
- D. Granting such other and further relief as this Court deems just and proper.

FIFTH CLAIM FOR RELIEF

(ASSAULT)

41. Paragraphs 1 through 40 are incorporated herein by reference
That the Court has pendant jurisdiction of this claim.

42. That as a result of the foregoing, the defendant, POLICE OFFICER JOHN HIDALGO, intentionally put the plaintiff in fear and fright of imminent physical harm.

43. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the defendant CITY OF NEW YORK in the amount of One Million (\$ 1,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

A. In favor of the plaintiff in the amount of One Million (\$1,000,000.00) Dollars;

B. Awarding plaintiff punitive damages in the amount of One Million (\$1,000,000.00) Dollars;

C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

SIX CAUSE OF ACTION
(MALICIOUS PROSECUTION)

44. Paragraphs 1 through 43 are incorporated herein by reference.

45. Defendants caused a false accusatory instrument to be filed against plaintiff.

46. The criminal instrument was dismissed and the criminal proceedings favorably terminated.

47. Defendants have deprived plaintiff of his civil, constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under 42 U.S.C. §§ 1983 and 1985 and the New York State Constitution.

48. Plaintiff was damaged in the sum of One Million (\$1,000,000.00) Dollars as a result of the malicious prosecution implemented by the defendants.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

A. In favor of the plaintiff in the amount of One Million (\$1,000,000.00) Dollars;

B. Awarding plaintiff punitive damages in the amount of One Million (\$1,000,000.00) Dollars;

- C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action;
- D. Granting such other and further relief as this Court deems just and proper.

SEVENTH CAUSE OF ACTION
(BATTERY)

- 49. Paragraphs 1 through 48 are incorporated herein by reference.
- 50. That as a result of the foregoing, the defendant, POLICE OFFICER JOHN HIDALGO, intentionally caused the plaintiff to suffer physical harm.
- 51. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the defendant CITY OF NEW YORK in the amount of One Million (\$ 1,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:


- A. In favor of the plaintiff in the amount of One Million (\$1,000,000.00) Dollars;
- B. Awarding plaintiff punitive damages in the amount of One Million (\$1,000,000.00) Dollars;
- C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and
- D. Granting such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a jury trial.

Dated: New York, New York
June 20, 2008

FINK & KATZ, PLLC


By: Jonathan A. Fink (JF 3097)
One of Plaintiff's Attorneys

Attorneys for Plaintiffs

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